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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

CURT MCLELLAN,  
  
                                Petitioner,  
  
                v.  
  
RENEE BAKER, et al.,  
  
                                Respondents.

Case No. 2:16-cv-03038-JCM-CWH

**ORDER**

On August 23, 2018, the court granted in part respondents’ motion to dismiss (ECF No. 7), holding that petitioner had not exhausted his state-court remedies for ground E. ECF No. 15. The court instructed petitioner to file a motion to dismiss the entire petition without prejudice, a motion to dismiss ground E, or a motion for other relief. Id. If petitioner did not file anything within thirty (30) days, then the court would dismiss the action as a mixed petition. Id. Petitioner has not filed anything within the allotted time. The court will dismiss the action.

The dismissal is without prejudice, but the court makes no statement about the timeliness of any subsequently commenced action.

Reasonable jurists would not find the court’s conclusion to be debatable or wrong, and the court will not issue a certificate of appealability.


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1 IT THEREFORE IS ORDERED that this action is **DISMISSED** without prejudice for  
2 petitioner's failure to exhaust his available state-court remedies. The clerk of the court shall enter  
3 judgment accordingly and close this action.

4 IT FURTHER IS ORDERED that a certificate of appealability will not issue.

5 DATED: November 14, 2018.

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7 JAMES C. MAHAN  
8 United States District Judge  
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